

1 Michael S. Kwun (SBN 198945)
mkwun@kblfirm.com
2 Kate E. Lazarus (SBN 268242)
klazarus@kblfirm.com
3 Amy Le (SBN 341925)
ale@kblfirm.com
4 KWUN BHANSALI LAZARUS LLP
555 Montgomery Street, Suite 750
5 San Francisco, CA 94111
(415) 630-2350

6 Carey R. Dunne (pro hac vice forthcoming)
carey@freeandfair.org
7 FREE AND FAIR LITIGATION GROUP, INC.
8 266 W. 37th St., 20th Floor
New York, NY 10018
9 646-434-8604

10 *Counsel for Amici Curiae*
(Amici listing on signature page)

11
12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15 AMERICAN FEDERATION OF
16 GOVERNMENT EMPLOYEES, AFL-CIO;
AMERICAN FEDERATION OF STATE
17 COUNTY AND MUNICIPAL
EMPLOYEES, AFL-CIO; SERVICE
18 EMPLOYEES INTERNATIONAL UNION,
AFL-CIO; AFGE LOCAL 1122; AFGE
19 LOCAL 1236; AFGE LOCAL 2110; AFGE
LOCAL 3172; SEIU LOCAL 1000;
20 ALLIANCE FOR RETIRED AMERICANS;
AMERICAN GEOPHYSICAL UNION;
21 AMERICAN PUBLIC HEALTH
ASSOCIATION; CENTER FOR
22 TAXPAYER RIGHTS; COALITION TO
PROTECT AMERICA'S NATIONAL
23 PARKS; COMMON DEFENSE CIVIC
ENGAGEMENT; MAIN STREET
24 ALLIANCE; NATURAL RESOURCES
DEFENSE COUNCIL, INC.; NORTHEAST
25 ORGANIC FARMING ASSOCIATION,
INC.; VOTEVETS ACTION FUND INC.;
26 WESTERN WATERSHEDS PROJECT;
COUNTY OF SANTA CLARA,
27 CALIFORNIA; CITY OF CHICAGO,
ILLINOIS; MARTIN LUTHER KING, JR.
28 COUNTY, WASHINGTON; HARRIS
COUNTY, TEXAS; CITY OF BALTIMORE,

Case No. 3:25-cv-03698-SI

**BRIEF AMICI CURIAE OF FORMER
GOVERNMENT OFFICIALS AND
ADVISORS IN SUPPORT OF
PLAINTIFFS' MOTION FOR
TEMPORARY RESTRAINING ORDER**

MARYLAND; and CITY AND COUNTY OF
SAN FRANCISCO, CALIFORNIA,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity
as President of the United States; UNITED
STATES OFFICE OF MANAGEMENT
AND BUDGET; RUSSELL VOUGHT, in his
official capacity as Director of U.S. Office of
Management and Budget; UNITED STATES
OFFICE OF PERSONNEL
MANAGEMENT; CHARLES EZELL, in his
official capacity as Acting Director of the U.S.
Office of Personnel Management;
DEPARTMENT OF GOVERNMENT
EFFICIENCY; ELON MUSK, in his official
capacity as the actual head of the Department
of Government Efficiency; AMY GLEASON,
in her official capacity as the titular Acting
Administrator of the Department of
Government Efficiency; UNITED STATES
DEPARTMENT OF AGRICULTURE;
BROOKE ROLLINS, in her official capacity
as Secretary of the U.S. Department of
Agriculture; UNITED STATES
DEPARTMENT OF COMMERCE;
HOWARD LUTNICK, in his official capacity
as Secretary of the U.S. Department of
Commerce; UNITED STATES
DEPARTMENT OF DEFENSE; PETE
HEGSETH, in his official capacity as
Secretary of the U.S. Department of Defense;
UNITED STATES DEPARTMENT OF
ENERGY; CHRIS WRIGHT, in his official
capacity as Secretary of the U.S. Department
of Energy; UNITED STATES
DEPARTMENT OF HEALTH AND
HUMAN SERVICES; ROBERT F.
KENNEDY JR., in his official capacity as
Secretary of the U.S. Department of Health
and Human Services; UNITED STATES
DEPARTMENT OF HOMELAND
SECURITY; KRISTI NOEM, in her official
capacity as Secretary of the U.S. Department
of Homeland Security; UNITED STATES
DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT; SCOTT
TURNER, in his official capacity as Secretary
of the U.S. Department of Housing and Urban
Development; UNITED STATES
DEPARTMENT OF JUSTICE; PAM
BONDI, in her official capacity as Attorney
General of the U.S. Department of Justice;

1 UNITED STATES DEPARTMENT OF THE
 2 INTERIOR; DOUG BURGUM, in his official
 3 capacity as Secretary of the U.S. Department
 4 of the Interior; UNITED STATES
 5 DEPARTMENT OF LABOR; LORI
 6 CHAVEZ-DEREMER, in her official capacity
 7 as Secretary of the U.S. Department of Labor;
 8 UNITED STATES DEPARTMENT OF
 9 STATE; MARCO RUBIO, in his official
 10 capacity as Secretary of the U.S. Department
 11 of State; UNITED STATES DEPARTMENT
 12 OF TREASURY; SCOTT BESSENT, in his
 13 official capacity as Secretary of U.S.
 14 Department of Treasury; UNITED STATES
 15 DEPARTMENT OF TRANSPORTATION;
 16 SEAN DUFFY, in his official capacity as
 17 Secretary for the U.S. Department of
 18 Transportation; UNITED STATES
 19 DEPARTMENT OF VETERANS AFFAIRS;
 20 DOUG COLLINS, in his official capacity as
 21 Secretary of Veterans Affairs; AMERICORPS
 22 (a.k.a. the CORPORATION FOR
 23 NATIONAL AND COMMUNITY
 24 SERVICE); JENNIFER BASTRESS
 25 TAHMASEBI, in her official capacity as
 26 Interim Agency Head of AmeriCorps;
 27 UNITED STATES ENVIRONMENTAL
 28 PROTECTION AGENCY; LEE ZELDIN, in
 his official capacity as Administrator of U.S.
 Environmental Protection Agency; UNITED
 STATES GENERAL SERVICES
 ADMINISTRATION; STEPHEN EHIKIAN,
 in his official capacity as Acting
 Administrator for U.S. General Services
 Administration; NATIONAL LABOR
 RELATIONS BOARD; MARVIN KAPLAN,
 in his official capacity as Chairman of the
 National Labor Relations Board; WILLIAM
 COWEN, in his official capacity as the Acting
 General Counsel of the National Labor
 Relations Board; NATIONAL SCIENCE
 FOUNDATION; BRIAN STONE, in his
 official capacity as Acting Director of the
 National Science Foundation; UNITED
 STATES SMALL BUSINESS
 ADMINISTRATION; KELLY LOEFFLER,
 in her official capacity as Administrator of the
 U.S. Small Business Administration; UNITED
 STATES SOCIAL SECURITY
 ADMINISTRATION; and LELAND
 DUDEK, in his official capacity as Acting
 Commissioner of the U.S. Social Security
 Administration,

Defendants.

Introduction

Amici file this brief in support of the motion of Plaintiffs, American Federation of Government Employees, AFL-CIO, et al., for a temporary restraining order enjoining the ongoing implementation of Executive Order No. 14210, 90 Fed. Reg. 9669 (Feb. 11, 2025). That Order exceeds the President's lawful authority by directing the restructuring of entire federal agencies, the elimination of programs and functions, and the drastic reduction of the number of employees within every agency, all without any Congressional authorization.

Plaintiffs have identified the principles embodied in the Constitution, federal statutes, and applicable decisional law that prevent the President from mandating and implementing "a critical transformation of the Federal bureaucracy" by Presidential fiat alone. In this brief, amici supplement Plaintiffs' arguments by highlighting how the President's wide-ranging Executive Order violates the carefully constructed checks and balances that are built into our Constitution. Plaintiffs' motion for a temporary restraining order should be granted.

Argument

The constitutional genius of America is the establishment of checks and balances among the three branches of federal government. In discussing "the necessary partition of power among the several departments," the Framers contemplated an "interior structure of the government" that would provide "the means of keeping each other in their proper places." The Federalist No. 51 (James Madison or Alexander Hamilton). They understood that the branches' functions were not designed to be "wholly unconnected" and "should not be so far separated as to have no constitutional control over each other." The Federalist No. 48 (James Madison).

Unchecked presidential power is not what the Framers had in mind. Although the Constitution vests the President with all executive authority, it vests Congress with all legislative authority, including, significantly, the power to set fundamental policies and procedures for the executive branch. By proclaiming and implementing Executive Order 14210, the President has usurped for himself the power to restructure entire federal agencies, which can only be accomplished through the constitutionally mandated collaboration between the President and Congress.

I.

The Constitution grants Congress the authority to “make all Laws which shall be necessary and proper for carrying into Execution” not just the Article I legislative powers, but also any necessary and proper laws for “all other Powers vested by this Constitution in the Government of the United States.” U.S. CONST. art. I, § 8, cl. 18. Since the nation’s founding, federal courts have recognized that the Constitution gives the legislative power to create, regulate, and restructure federal agencies to Congress—not to the President. *Myers v. United States*, 272 U.S. 52, 129 (1926). Congress, therefore, creates and organizes the offices and departments of the federal government by virtue of the Necessary and Proper Clause. Indeed, “among Congress’s first acts were establishing executive departments and staffs” Gary Lawson, *Necessary and Proper Clause*, THE HERITAGE GUIDE TO THE CONSTITUTION (2014).¹

The President’s constitutional authority, by contrast, is set forth in Article II. U.S. CONST. art. II, § 1, cl. 1. The President has no constitutional legislative authority. *INS v. Chadha*, 462 U.S. 919, 951, 956–59 (1983); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 655 (1952) (Jackson, J., concurring). And none of the President’s enumerated powers in the Constitution entitle the President to unilaterally initiate and carry out a massive restructuring of the executive branch. Paul Larkin & John-Michael Seibler, *The President’s Reorganization Authority*, Heritage Found. Legal Memorandum No. 210, at 3 (July 12, 2017).² The Constitution in turn requires that the President “take Care that the Laws be faithfully executed.” U.S. CONST. art. II, § 3. By bypassing Congress, Executive Order 14210 is an affront to that directive.

II.

If the President disagrees with the legislative choices made by Congress—if he believes, for example, that the government is bloated, spending is out of control, or that programs and policies are poorly conceived—under our Constitutional scheme, he may recommend to Congress corrective measures that he deems “necessary and expedient.” U.S. CONST. art. II, § 3. The President can, for example, recommend spending rescissions and government reorganizations for

¹ <http://www.heritage.org/constitution/#!/articles/1/essays/59/necessary-and-proper-clause>.

² https://www.heritage.org/sites/default/files/2017-07/LM-210_0.pdf

1 Congress to vote on. *See* 2 U.S.C. §§ 684–688; 5 U.S.C. §§ 901–912.³ But he cannot unilaterally
2 rework those structures of government without Congressional action.

3 The Supreme Court’s decision in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579,
4 587 (1952), illustrates the limitations on the President’s powers. There, the Court struck down
5 President Harry S. Truman’s executive order taking possession of a steel mill. *Id.* at 583, 589.
6 President Truman claimed this action was necessary to prevent a nationwide strike that would
7 jeopardize national security. *Id.* at 583. The Court held, however, that the executive order usurped
8 legislative power, and was impermissible in the absence of a law from Congress or a clear
9 authorization in the Constitution itself. *Id.* at 588–89.

10 ///

11 ///

12
13
14
15
16
17
18
19
20
21
22
23
24
25 ³ Congress’s current understanding of the balance of powers is in accord. For example, in
26 February, Rep. James Comer (R-Kentucky) introduced the Reorganizing Government Act of
27 2025. H.R. 1295, 119th Cong. (2025). “Under this bill, *Congress must vote* on proposed
28 reorganization plans within 90 days.” Press Release, House Committee on Oversight and
Government Reform, Chairman Comer and Senator Lee Introduce Bill to Fast-Track President
Trump’s Government Reorganization Plans (Feb. 13, 2025) (emphasis added),
[https://oversight.house.gov/release/chairman-comer-and-senator-lee-introduce-bill-to-fast-track-
president-trumps-government-reorganization-plans/](https://oversight.house.gov/release/chairman-comer-and-senator-lee-introduce-bill-to-fast-track-president-trumps-government-reorganization-plans/).

Conclusion

The wisdom of the Founders in creating a system of checks and balances and the principle underlying *Youngstown* should guide the Court in its consideration of the plaintiffs' motion for a temporary restraining order. The President's actions are based in radical claims of powers that do not exist. For the foregoing reasons, *amici* respectfully support the plaintiffs' motion for a temporary restraining order.

Dated: May 8, 2025

KWUN BHANSALI LAZARUS LLP

By: /s/ Michael S. Kwun

Michael S. Kwun (SBN 198945)
mkwun@kblfirm.com
Kate E. Lazarus (SBN 268242)
klazarus@kblfirm.com
Amy Le (SBN 341925)
ale@kblfirm.com
555 Montgomery Street, Suite 750
San Francisco, CA 94111
(415) 630-2350

Carey R. Dunne (pro hac vice forthcoming)
carey@freeandfair.org
FREE AND FAIR LITIGATION GROUP, INC.
266 W. 37th St., 20th Floor
New York, NY 10018
646-434-8604

Counsel for Amici Curiae Donald B. Ayer, Ty Cobb, Barbara Comstock, Mickey Edwards, Philip Lacovara, Michael Luttig, Carter Phillips, Trevor Potter, Alan Charles Raul, Paul Rosenzweig, Nicholas Rostow, Robert Shanks, Fern Smith, Peter Smith, William Joseph Walsh, and Christine Todd Whitman